



Appendix B

Complaint Process



I. INTRODUCTION

- A. A person who believes that an election authority has violated or will violate a provision of Title III of the Help America Vote Act (42 U.S.C. 15512) that concerns an election for federal office may file a complaint with the Michigan Department of State's Bureau of Elections (Bureau) pursuant to these guidelines.
- B. A person, before filing a complaint pursuant to these guidelines, shall notify the election authority or the Bureau of Elections regarding his or her concerns. A person shall utilize these complaint procedures if, and only if, the election authority fails to satisfactorily address possible Title III violations.

II. COMPLAINT PROCEDURE

- A. Timing
 - 1. If the complaint meets Section III's requirements, the Department shall forward the complaint to the named election authority in five (5) days for a response.
 - 2. An election authority shall have thirty (30) days to provide a written response to the complaint.
- B. Complaint consolidation/withdrawal
 - 1. The Bureau may consolidate complaints filed pursuant to these guidelines
 - 2. A complainant may withdraw his or her complaint at any time during the complaint process. A complaint, once withdrawn, shall not be re-filed.

III. COMPLAINTS

- A. Required Information
 - 1. A complaint filed under these guidelines shall be in writing, notarized, signed and sworn by the person filing the complaint.
 - 2. The complaint shall allege, with specificity, the following:
 - a) The election authority that has violated Title III
 - b) The Title III provision the election authority violated
 - c) An explanation of how the election authority named in (III)(2)(a) violated the Title III provision listed in (III)(2)(b)



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- d) A statement that the complainant either witnessed or possesses first-hand knowledge of the conduct alleged in (III)(2)(c)

B. Dismissal

1. Complaints that do not meet the requirements of III(A)(1) and III(A)(2) shall be dismissed without prejudice.
2. A person may re-file a complaint that has been dismissed without prejudice.

C. Optional Information

The complaint may include the following information:

1. A request that the Department conduct a hearing on the record (See Section V below)
2. Notarized affidavits from a maximum of three (3) persons who witnessed the alleged violations.

IV. *RESPONSES*

A. Requirements

1. The response shall be in writing, notarized and signed by the chief election officer of the election authority
2. The response shall confirm or deny the allegation (if known) and shall include affidavits from a maximum of three (3) persons who can provide any additional information that will assist the Bureau in determining whether the election authority violated Title III.

B. Optional Information

The Response may include notarized affidavits from a maximum of three (3) persons who have information that may assist the Bureau in determining whether the election authority violated Title III.

V. *HEARINGS*

A. Procedure

1. A complainant may request that the Bureau conduct a hearing on the record (hereafter “hearing”) regarding an alleged violation of Title III.



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2. A complainant who desires a hearing must make such a request in the complaint.
3. The Department will schedule a hearing only if it receives a valid complaint.

B. Notice & Appearance

1. The Bureau shall notify the election authority of the complainant's hearing request.
2. The election authority shall inform the Bureau within thirty (30) days whether it intends to appear at the hearing. If the election authority opts to forgo the hearing, the Bureau shall rely on the authority's written response to the complaint.

C. Witnesses

1. Complainant - The Complainant may call as witnesses only those persons who provided affidavits pursuant to Section III (B)(2).
2. Election Authority – The election authority may call as witnesses only those persons who provided affidavits pursuant to Section IV (A)(2).
3. Bureau of Elections
 - a. The Bureau shall review both witness lists to ascertain the nature of the testimony, and shall strike those witnesses it believes will offer irrelevant or redundant testimony. A witness excised from a witness list shall not testify at the hearing.
 - b. The Bureau shall not bar the testimony of the complainant or the election authority's chief election officer.

D. Procedures

1. A witness shall testify only to those Title III violations alleged in the complaint.
2. Hearings shall be held in Lansing. The Bureau shall schedule the date and time of the hearing.
3. The Bureau shall make an audio recording of the hearing.
4. The complaint, the response, any valid accompanying affidavits, and the relevant hearing testimony shall constitute the record.



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5. Hearings shall be informal, non-contested case hearings and shall not be governed by the Administrative Procedures Act (APA), 1969 P.A. 306, as amended.
6. The Bureau of Elections shall designate one or more persons to direct the hearing.

VI. DETERMINATION

- A. The Bureau shall review the record regarding the alleged Title III violations.
 1. Procedures
 - a. The Bureau shall weigh written testimony—whether offered via complaint, response, or affidavit—equally with any oral testimony offered at a hearing.
 - b. The Bureau shall not draw any inference from a complainant's decision to request or not request a hearing or an election authority's decision to attend or not attend a hearing.
- B. If, under the guidelines, the Bureau does not find reason to believe that the election authority has violated Title III, it shall dismiss the complaint and publish the results on its website at www.sos.state.mi.us.
- C. If, under the guidelines, the Bureau has found reason to believe that the election authority has violated Title III, it shall, pursuant to Section 21 of the Michigan Election Law, 1954 P.A. 116, as amended, provide an appropriate remedy.

VII. REMEDY

- A. The Bureau shall have wide discretion to provide an appropriate remedy
 1. A remedy may include, but is not limited to, the following:
 - a. Sending a written finding of a Title III violation to the authority
 - b. Requiring a written response from the election authority, detailing how it will remedy a Title III violation
 - c. Additional election training for the election authority
- B. A remedy shall not, under any circumstances, include a financial penalty



VIII. TIMING

- A. The Bureau shall issue a final determination within 90 days after it receives the complaint, unless the complainant consents to an extension
 - 1. If the Bureau fails to issue a final determination within 90 days, it shall forward the record to the Department of State's Bureau of Legal Services for alternative dispute resolution.

IX. ALTERNATIVE DISPUTE RESOLUTION

- A. The Bureau of Legal Services shall appoint a hearing officer to review the record. The hearing officer shall render a final determination within 60 days after receiving the record.
- B. After reviewing the record, the hearing officer shall issue a final determination declaring whether there is reason to believe that the election authority has violated Title III.
 - 1. If the hearing officer finds reason to believe that an election authority has violated Title III, s/he shall order an appropriate remedy. The Bureau of Elections shall enforce the remedy.
 - a. The Bureau of Elections shall report the hearing officer's decision and remedy (if any) on its website.